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HUMAN RIGHTS COMMITTEE

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SUMMARY RECORD OF THE 1330th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 11 July 1994, at 3 p.m.

Chairman: Mr. ANDO

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The meeting was called to order at 3.10 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

Third periodic report of Italy (CCPR/C/64/Add.8) (continued)

1. At the invitation of the Chairman, the delegation of Italy took a seat at the Committee's table.

2. The CHAIRMAN invited members of the Committee to continue consideration of the third periodic report of Italy and recalled that the Italian delegation had begun to reply to additional oral questions put by the Committee.

3. Mr. TORELLA DI ROMAGNANO (Italy) thanked members of the Committee for their warm welcome and said that his Government was very proud to see as able an Italian citizen as Mr. Pocar among the members of the Committee.

4. With regard to the citizens' advocate (para. 4 of the report), he said that, in Italy, the rights of the individual were guaranteed nationally and internationally and protected by various procedures. The public was aware of the need for a national citizens' advocate, but the political parties had not yet been able to agree on the advocate's duties and powers. The bill establishing the office of the advocate had not yet been adopted. Citizens' advocates already existed in a number of regions where they were authorized to investigate any lapse on the part of local authorities and to institute legal proceedings if they found a complaint to be justified. They did not exist in all regions, but the two or three areas which had not yet appointed advocates were expected to do soon. Under national legislation, the regions were to be responsible for coordinating, through a Special Committee, activities in all areas delegated to the regions by the Government.

5. Referring to the question of minorities, which had been raised by a number of members of the Committee, he said that the Italian Constitution guaranteed the rights of all minorities present in Italy after the Second World War, provided they met the language criterion. As stated in paragraph 195 of the report, in the regions of Valle d'Aosta and Alto Adige, minorities were protected at the constitutional level. That special protection derived from historical factors dating from almost a century before. In 1994, the Ministry of the Interior had for the first time issued a report on the situation of minorities in Italy. The report was divided into three parts, the first dealing with national and international legal protection, the second containing detailed information on all minorities in Italy and the third describing the main problems of minorities in general. A copy of that very comprehensive report was at the Committee's disposal.

6. Some members of the Committee had raised the question of the status of immigrant workers. Under a generally accepted legal principle, immigrant workers were not considered as minorities. In some cases, however, Italy permitted some immigrant groups to appoint a representative. Since 1986, all immigrants received the same treatment as Italian nationals in all respects, with the exception of civic activities. At present, non-European Union

nationals could not vote in any election, even at local level. It should also be noted that Italian legislation was designed to integrate immigrants into national life.

7. In addition to the Commission for the Parity and Equality of Opportunities of Men and Women (see para. 18 of the report), all ministries had machinery for promoting such equality of opportunity. In addition, the Commission already had genuine decision-making power within the Ministry of Labour regarding the application of Act No. 125 of 1991 on positive actions. The Commission could submit a report to the Labour Inspectorate to obtain information. The Parity Counsellor performed important functions and was authorized to institute legal proceedings in cases of group discrimination.

8. Night work for women was in principle prohibited under Italian law. Exceptions were made, however, under collective agreements. Pregnant women were prohibited from working at night from the beginning of pregnancy until seven months after child birth. There were many collective agreements on night work for women and their provisions varied depending on the sector of production, the situation of the enterprise and level of negotiation.

9. Mr. CITARELLA (Italy) said that, in the last local elections, the parties had been obliged by law to ensure that at least one-third of all their candidates were women.

10. Mr. TORELLA DI ROMAGNANO (Italy), referring to the question of violence against women and sexual harassment, a particularly sensitive public issue, said that every day cases were reported and there was an increasing demand for appropriate legislation to deal with the problem.

11. The question of violence in the family had received special attention from the regional authorities, which were responsible for social services. Seven regions had adopted legislation requiring the social services to take measures to discourage violence against women and to protect the victims of violence. Over the past 10 years, considerable progress had been made in that regard at the judicial level. The number of women members of the police forces had steadily increased, as had the number of women magistrates. The training programme for new police recruits focused in particular on problems of violence in the family and sexual assault and, while further progress was still needed, the attitude of the police had improved markedly in that respect. In addition, many courts had set up groups of magistrates, mainly women, specializing in cases of violence in the family and rape.

12. Over the last 10 years, women's groups and associations had stepped up their activities to combat violence against women. Many such groups offered specific assistance to victims. Since 1985, seven centres financed by the regional, provincial and municipal authorities and run by voluntary associations had also been opened, and four others were at the planning stage.

13. There was as yet no legislation dealing with sexual harassment, but under article 2087 of the Civil Code, employers were obligated to take any measures to guarantee the physical and moral integrity of employees.

14. Mr. CITARELLA (Italy) referring to the campaign against racism and all forms of intolerance, said that in recent years, particularly as from 1990, several cases of intolerance against non-European Union nationals and nomads had been reported in Italy. The persons responsible for these sporadic incidents were extreme right-wing groups and gangs of young hooligans known as "skin heads". It was not until 1992 that the phenomenon had taken on the characteristics of a racial discrimination campaign. To avoid possibly exacerbating a phenomenon which, for the time being, still consisted of isolated incidents and to deal with the forms of racial intolerance which had emerged in Italy in recent years, the Italian Government had submitted bill No. 2061C on racial, ethnic and religious discrimination to Parliament on 19 December 1992. That new legislative measure formed part of a tradition of full protection of the right deriving from the principles of the Constitution not to be subjected to discrimination based on race, language, religion or political opinion. In view of the time needed for adoption of the bill, the urgent need for amendments to the prevailing regulations on racial, ethnic and religious discrimination and the importance of establishing more effective instruments for the prevention and punishment of xenophobic or anti-semitic intolerance and violence, the Italian Government had changed the bill into a Decree-Law which had come into effect on 28 April 1993. That legislation was of particular importance in that it referred specifically to the United Nations Convention on the Elimination of All Forms of Racial Discrimination and attempted to make certain principles of the Convention legally enforceable.

15. The English translation of the article of the Constitution stipulating that Italy was a Republic based on labour, referred to by Mr. Sadi, was correct. The article, which was more a principle than a rule, had initially been intended as a reminder to all that in Italy the participation of workers in national life was considered essential. It also was an invitation to improve the opportunities and social protection of workers.

16. The CHAIRMAN thanked the Italian delegation for their information and invited them to reply to the questions on section II of the list of issues. That section read as follows:

"II. Right to life, treatment of prisoners and other detainees, freedom and security of person and right to a fair trial (arts. 6, 7, 8, 9, 10 and 14)

(a) In view of the fact that there is no capital punishment in the Italian legal system, does the Government intend to ratify in the foreseeable future the Second Optional Protocol to the Covenant, aiming at the abolition of the death penalty (see para. 27 of the report)?

(b) Please clarify what measures have been taken by the authorities to ensure the strictest observance of article 7 of the Covenant, particularly in view of the 'sporadic and isolated incidents' of police violence mentioned in paragraph 41 of the report.

(c) Have there been any complaints to authorities during the period under review of torture, inhumane or degrading treatment or punishment of prisoners or detainees? If so, have charges been brought against the perpetrators of such acts and what measures have been taken to compensate the victims (see paras. 41-42 of the report)?

(d) Please provide further information on Decree-Law No. 152 of 13 May 1991 (converted into Act No. 203 of 12 July 1991), referred to in paragraph 51 of the report, whereby provisions were made for 'emergency measures against organized crime, and the transparency and effectiveness of administrative activities' and on its implementation in practice. Particularly, what are the conditions and duration of incommunicado detention?

(e) Has Presidential Decree No. 248 of 18 May 1989 amended the legal provisions relating to the possibility for some prisoners to serve in a farm colony or a labour establishment? Please clarify how such an obligation can be reconciled with the requirements of articles 8, 9 and 10 of the Covenant.

(f) Please provide information on any specific factors or difficulties such as overcrowding of prisons or detention centres, affecting the implementation of article 10 of the Covenant.

(g) In the light of paragraphs 81 to 83 of the report, please clarify the cases in which the Government Procurator may deem it advisable not to carry out any action at which the defending council is present.

(h) Have the adoption of a new Code of Criminal Procedure and the reform of the Code of Civil Procedure led to any measurable progress to date in reducing the length of legal proceedings and what are the overall effects of the reform on criminal and civil procedures (see paras. 75-76 and 133-134 of the report)?

(i) Please provide information about the system of application of the penalty at the request of the parties as provided for in the new Code of Criminal Procedure (see para. 115 of the report)."

17. Mr. TORELLA DI ROMAGNANO (Italy), replying to question (a), said that Italy was on the way to ratifying the Second Optional Protocol. On 29 June 1994, the Government had approved the relevant bill, which had been forwarded to Parliament. The ratification would be accompanied by a reservation to the effect that the abolition of the death penalty would not apply to cases where the Military Code was applicable in time of war. That reservation had been deemed necessary for procedural reasons, as the death penalty in time of war was provided for by the Constitution and its abolition would require the passage of legislation amending the Constitution, which would involve a lengthy and complex procedure.

18. With regard to question (b) of section II, he said that, over the past five years, 148 criminal proceedings had been brought against police officers charged with violence and bodily harm. In a number of cases, police officers or prison warders had been found guilty and some members of the police had been subjected to disciplinary sanctions, such as fines or reprimands. It was important to note that police training courses paid particular attention to the question of human rights.

19. Referring to question (c), he said that, in the last two years, several cases of ill-treatment of prisoners had been reported and had attracted considerable public interest. Those cases included the following:

Tarzan Sulic and Mira Djuric, who had respectively been killed and injured in a carabinieri station at Ponte di Brenta;

Prison of Asinara: some cases of ill-treatment of prisoners had been the subject of investigations by a judge who found the allegations to be unfounded;

Carmelo La Rosa, who committed suicide during detention in Messina prison;

Biagio Mazzara, who declared that he had been attacked by members of the prison staff during his detention in Padua prison;

Prison of Naples - Secondigliano: at the request of Parliament, the judicial authorities were conducting investigations into incidents which had taken place in the prison;

Antonio Morabito: died after a police action.

20. Replying to question (d), he said that Decree-Law No. 152 of 13 May 1991 had been supplemented by Law No. 356, which had entered into force in August 1992. Article 41 bis of that law, whose main purpose was to strengthen action against organized crime, provided that the Minister of Justice could suspend the application of the ordinary prison regulations with respect to dangerous prisoners or in special situations within prisons. The Constitutional Court, in some of its decisions, had held that the provision in question was not contrary to constitutional principles, but had also stated that the prisoners to which it had been applied could lodge a complaint with the competent court.

21. The Government, the political parties and public opinion were currently attempting to ascertain whether the special treatment provided for in article 41 bis could be considered as a restriction on the application of normal prison rules. As a result of the special measure, a growing number of prisoners had decided to cooperate with the judicial authorities by giving information on the criminal organizations to which they belonged.

22. Moreover, the Italian Penal Code contained specific rules concerning pre-trial detention. In particular, it stipulated that, in such cases, the police must inform the public prosecutor as soon as possible and within a maximum of 24 hours, to enable him to refer the suspect to the competent judge.

23. With regard to question (e), he said that the Italian criminal system was still based on the principle that prisoners who had already been sentenced to imprisonment should carry on an activity, generally outside the prison, taking into account their qualifications, their attitudes and their social condition.

24. Replying to question (f), he reaffirmed that article 10 of the Covenant, and the relevant rules of the European Convention, were fully implemented and respected. Despite the increase in the prison population, the provisions of the three main paragraphs of article 10 had not given rise to any derogation or special regulation.

25. Furthermore, Law No. 296 of 12 August 1993, adopted recently to deal with the specific problems of prison overcrowding, contained new provisions pertaining to the treatment of prisoners and the expulsion of foreign citizens. The new law provided, inter alia, that prisoners meeting certain criteria should be allowed to work and to take professional training courses.

26. Regarding house arrest, he recalled that violence in places of detention was due mainly to overcrowding. As a result, new and more liberal provisions had been introduced by the 1993 law concerning new detention measures. Those legal provisions complemented the deeply-rooted principle of the Italian legal system which stressed the rehabilitation of prisoners. In that respect, house arrest measures had been increased in scope to enable specific categories of persons to serve their sentence in their own residence, provided that it did not exceed a term of three years. The categories of persons who could benefit from that measure were:

Pregnant women or women breast-feeding children, or women with children under five years of age living with them;

Persons with serious health problems requiring regular contact with local hospitals;

Persons over 60 years of age, even if only partially disabled;

Persons under 21 years of age, provided there was evidence of health, school, work or family problems.

27. In addition, the law provided that all prisoners other than those sentenced for involvement in the mafia's criminal activities could be granted either full or partial release for good behaviour.

28. With regard to the expulsion of citizens of non-European Union countries, the law of 12 August 1993 provided in article 8 that foreign citizens under preventive detention for offences not considered as serious crimes or persons who had been sentenced to up to three years' imprisonment without the possibility of remission were expelled immediately at their own request or at

the request of their counsel, and sent back to their country of origin or the country from which they had come, provided that they did not have any serious health problems or find themselves in danger for security reasons owing to the outbreak of war or an epidemic. The object of the new law was to avoid overcrowding in prisons and at the same time to introduce an innovative judicial procedure which, while respecting the rights of the defence and the correct exercise of judicial power, still allowed effective use of such a measure as expulsion.

29. Article 50 of the law on prison organization (see para. 88 of the report) provided that prisoners had a duty to work as part of their re-education and to facilitate their reintegration into society.

30. In the period between 1989 and 1990, the number of prison inmates had fallen from 30,680 to 26,150, a decrease of 14.8 per cent, and the number of persons subject to safety measures had fallen by 13.1 per cent.

31. The scope of question (g) was not very clear, but his delegation could nevertheless reply to some aspects of it. Criminal action was compulsory and no public official or public prosecutor had discretionary authority to decide whether action should be instituted or not. Of course, if, in the preliminary phase of his inquiry, the public prosecutor had not been able to acquire sufficient evidence to indicate that an individual should be charged, he would declare the case closed and decide to halt the investigation.

32. In order to answer the question raised in subparagraph (h), it should first be made clear that the entry into force of the Code of Civil Procedure had had to be postponed until the end of 1994, thereby delaying the introduction of the institution of justice of the peace. Two years after the entry into force of the new Code of Criminal Procedure, many problems remained unsolved and criminal trials continued to be very lengthy. Furthermore, the special shorter proceedings introduced by the new Code had not been used as much as anticipated. For example, only 20 per cent of the trials concluded between July 1992 and June 1993 had been conducted under the new procedures.

33. Conversely, with regard to question (i), the system of punishment at the request of the parties had yielded very encouraging results. Article 444 of the new Code of Criminal Procedure provided that either the accused or the public prosecutor could ask the judge to follow a criminal procedure applying a treatment of special favour to the accused by imposing a punishment other than imprisonment or a period of imprisonment corresponding to at least one third of the punishment laid down by the law. If the other party accepted the request, the judge, after ascertaining the exact character of the crime and the applicable penalty, would pronounce a judgement corresponding to the agreement reached. The new Code allowed that procedure only in cases where the penalty did not amount to imprisonment for more than two years. Furthermore, a sentence arrived at on the basis of an agreement between the parties must be accepted by the injured party.

34. His delegation would be pleased to provide members with any further information they required.

35. Mr. DIMITRIJEVIC thanked the Italian delegation for its concise and clear statement and for the wealth of information contained in its report. He expressed appreciation for Mr. Pocar's valuable contribution to the Committee's work, in the great legal tradition of Italy.

36. He felt bound to point out, however, that the particularly precious language used throughout the report had made it difficult reading. He wondered in particular whether the words chosen reflected a new type of legal thinking or approach, as in the case of the "presumption of non-guiltiness" referred to in paragraph 114. Again, in paragraph 115, reference was made to the system of "application of the penalty at the request of the parties". As the expression was not very clear, it would be helpful to know whether that system was the same as the plea bargaining practised in the United States.

37. With regard to the provision of article 9 of the Covenant guaranteeing the right of any person arrested to be brought "promptly" before a judge, the practice of provisional detention in Italy gave cause for concern. Paragraph 75 of the report appeared to suggest that the duration of the detention depended far too much on the discretion of the public prosecutor, who, as a number of non-governmental organizations had stated with regard to Italy, could decide to prefer new charges against an accused so as to extend the provisional detention. Specifically, further details were needed on the application of article 303 of the new Code of Criminal Procedure regarding the average overall length of detention.

38. Admittedly, some reactions by a Government grappling with terrorism were understandable but could lead to situations which were difficult to defend from the legal point of view. It was therefore reasonable to wonder about the legal characterization of mafia-linked crimes. Were they "organized crime" as mentioned by the Italian delegation? Again with regard to the accusatory procedure, the terms used in paragraph 111 regarding the "accusatory option" to describe the approach under the new Code of Criminal Procedure, which departed from "inquisitorial guaranteeism", required explanation. To conclude the chapter on judicial guarantees, further information on the way in which judicial assistance operated would be helpful.

39. The Italian delegation's replies to questions on article 10 of the Covenant had been helpful and would be even more so if they were accompanied by figures on recidivism, which were the best indicator of the success or failure of prison rehabilitation efforts.

40. Mr. MAVROMMATIS paid tribute to the Italian Government, which was represented by a highly competent delegation. Moreover, having been a member of the Committee since its inception, he could testify to the exemplary contribution made by Mr. Pocar to the Committee's work.

41. The report, while praiseworthy, was not easy to read. The oral replies had been very instructive, although in some cases the content of the Covenant had not really been taken into account. For example, on the question of minorities, the Italian delegation had referred only to linguistic minorities, whereas article 27 was much broader in scope.

42. With regard to article 10 of the Covenant, while several cases had been dealt with, as the Italian delegation had explained, a considerable number of complaints remained pending. While noting the assertion at the end of paragraph 40 of the report that the fact that torture had not been introduced as an offence into the Italian legal system must be regarded as a way of rendering more effective and more immediate the punishment of any persons guilty of treatment not in accordance with international norms, he said that it was imperative for investigations to be conducted by a completely independent body. He wondered who, for example, conducted the investigation in the case of a police officer suspected of ill-treatment? Moreover, the practice of torture could be effectively controlled by a procedure of independent inspections of places of detention; he wondered whether such a system existed in Italy.

43. With regard to confessions, it would be helpful to know not only whether confessions obtained under duress were admissible, but also whether any information contained in such confessions (for example the location of stolen objects) could be used, or whether that was prohibited. Also on the subject of confessions, had the Italian legislature considered the question of video cassette or other recordings of confessions, whether or not in the presence of an investigating magistrate?

44. He deplored the fact that the maximum duration of provisional detention was set at six years (para. 75 of the report), which was virtually inconceivable and could even be regarded as a denial of justice.

45. With regard to compensation, the Committee needed to know how injury was assessed. For example, if the Committee, under the procedure established by the Optional Protocol, had to ask the Italian Government to pay compensation to an individual, what action would be taken on that request?

46. He recalled that one of the traditional ways of guaranteeing the independence of magistrates was to accord them judicial immunity. However, Italian legislation provided for the civil liability of judges (see paras. 86 and 87) and there were grounds for wondering about the effects which such a threat might have on the proper administration of justice.

47. Mr. BAN paid tribute to Mr. Pocar's contribution to the cause of human rights through his work as a member of the Committee. He welcomed the conciseness, clarity and high degree of competence with which the report had been written.

48. Regarding the right to life, he welcomed Italy's forthcoming ratification of the Second Optional Protocol to the Covenant and expressed the hope that the reservation to be made, which was justified under the current Constitution, could one day be withdrawn.

49. He had been pleased to learn that a final verdict had been delivered in the trials of various persons believed to be responsible for deaths occurring during custody or detention. However, in the case of a person detained in Rome, a matter which had been raised by the Committee against Torture in April 1992, the results of the investigation were still unknown. Perhaps the delegation would have more information on the matter.

50. With regard to the right to life, which, as the Italian delegation had said, had a bearing on many matters besides capital punishment, he said that he had read with interest the paragraph of the report on euthanasia (para. 34) and wondered whether the National Bicethics Committee intended to submit draft legislation on therapeutic obduracy.

51. With regard to the rights embodied in articles 7 and 10 of the Covenant, he said that he had been surprised to read in paragraph 42 of the report (CCPR/C/64/Add.8) that torture was not practised in Italy. That assertion was clearly inconsistent with the facts. However, the report had been prepared in 1992 and the cases of torture and ill-treatment which had been referred to during the discussion had no doubt occurred later. Moreover, the Italian delegation had not denied some cases of torture which were common knowledge abroad, and he thanked the delegation for its candour. Nevertheless, he was regularly assailed by doubts in cases of alleged torture. As lawyers knew only too well, there were occasions when persons detained or accused in criminal proceedings sometimes declared that they had been tortured with the sole aim of strengthening their defence. As a result, the authorities and the public were often sceptical as to the veracity of torture allegations. Unfortunately, in Italy, no further proof of the existence of cases of torture or ill-treatment was needed. He quoted several examples and said that he would like the Italian delegation to state what measures the authorities intended to take to prevent any recurrence of such situations.

52. With regard to article 9, paragraph 4, of the Covenant, he said that it was difficult for a foreigner to understand the tenor of the provisions of the new Italian Code of Criminal Procedure. Specifically, he wondered what was the exact scope of the provisions on flagrante delicto, otherwise known as arrest without warrant. More generally, how was observance of the provisions of article 9, paragraph 4, of the Covenant guaranteed by the law?

53. On the question of house arrest, the Italian delegation had provided some explanations. The law apparently provided that a person under house arrest should be regarded as being in pre-trial detention. He did not understand what that meant in practice. He would also like to know what remedies were available against coercive measures. The report suggested that only arrest warrants and actual detention could be contested before the courts, unlike other coercive measures, including house arrest. Was that true?

54. With regard to article 14 of the Covenant, it would be helpful to have more exact statistics on the number of persons placed in provisional detention under prevailing legislation. Was the figure higher than under earlier legislation? He would also like an explanation of the term "confidential defence counsel" used in paragraph 119 and 120 of the report.

55. With regard to legal assistance, the new Italian legal system seemed to impose additional duties and obligations on defence counsels. Were they entitled to any compensating benefits - in financial terms, for example?

56. Finally, a number of highly reliable sources had mentioned judicial measures affecting Italian magistrates. What effects could such measures have, in particular with regard to the credibility and independence of magistrates?

57. Mr. PRADO VALLEJO noted that, in paragraph 37 of the report, it was stated that "the practice of torture and other cruel, inhuman or degrading treatment or punishment has always, without any exception been considered to be contrary to the political approach and the Government action that have from the very outside characterized democratic Italy". While he did not doubt that the Italian authorities were guided by a humanistic philosophy and worked in a democratic spirit, the facts were clearly very different from the theory. A number of individuals had complained of being subjected to torture or ill-treatment. The fact that the offence of torture did not exist in Italian law, might explain in part why that practice had become widespread among the security forces, particularly the police. He would like some clarification on that point. What did the authorities intend to do to put an end to torture and ill-treatment? According to the information received, investigations opened following complaints were few and the persons responsible for such acts were not systematically brought to justice. In view of the wide gap between theory and practice in that regard, the question of the measures to be taken to remedy the situation was of absolutely crucial importance. Did the authorities intend to organize seminars on human rights for members of the security forces, for example? Had any such steps already been taken? Paragraph 41 of the report stated that sporadic and isolated incidents of resort to violence by some members of the forces of order had been reported and that severe sentences had been imposed on the guilty parties. The information available to the Committee pointed not to sporadic incidents, but to a widespread practice of the security forces. He would like some information on the procedures for investigating cases of torture, on the measures which had been taken and on the number of convictions.

58. The question of provisional detention was another cause for concern. In Italy, the duration of that type of detention could vary from a few months to six years, which was excessive. In his country, Ecuador, it could not exceed 48 hours, after which the detainee must be brought before a judge. How did the Italian authorities justify such a lengthy period and could it not be shortened? Moreover, the victims of arbitrary detention should of course be compensated. There was in fact a procedure for that in Italy, but it seemed to be subject to a number of restrictions, on which further clarification would be helpful.

59. Finally, a question which had been raised during the consideration of Italy's second periodic report (CCPR/C/37/Add.9), but which had apparently not been taken up again in the third periodic report (CCPR/C/64/Add.8), was that of farm colonies and labour establishments to which prisoners considered to be dangerous were assigned. He would like to know who decided that a prisoner was dangerous and must be placed in a farm colony or a labour establishment and what remedy was available to a prisoner to contest being classified as "dangerous".

60. Mr. WENNERGREN welcomed the fact that Italy's third periodic report contained such a wealth of information; however, the information on the new codes of civil and criminal procedure lacked clarity. It was particularly difficult to distinguish new from existing provisions and to understand exactly what made them new. In paragraph 110 of the report, for example, it was stated that the new Code of Criminal Procedure was highly innovative compared to its predecessor, but no attempt was made to explain what its

innovative aspects were or on what text it was based. The lack of clarity in some paragraphs of the report was no doubt the reason for some of the Committee's questions, which themselves were unfortunately not always very clearly stated. However, the oral explanations provided by the Italian delegation had provided a number of helpful clarifications.

61. With regard to provisional detention, a duration of six years was clearly unacceptable. He recalled the provisions of article 9, paragraph 3, of the Covenant and pointed out that, in its general comment on that article, the Committee had made it clear that pre-trial detention should be an exception and kept as brief as possible. In that respect, the situation in Italy was not compatible with the Covenant. In general, like Mr. Mavrommatis and Mr. Ban, he wondered whether the innovative provisions of the Code of Criminal Procedure were really compatible with the provisions of the Covenant.

62. With regard to the right of conscientious objection, provided for in article 8 of the Covenant but also deriving in some respects from article 18, he noted that paragraph 149 of the report dealt only with conscientious objection on religious grounds. It was to be hoped that Italian law provided also for grounds of conscience, in accordance with article 8 of the Covenant. The impression gained from the report was that the Italian legislature regarded conscientious objectors as second-class citizens and had paid very little attention to non-religious grounds of conscience. The rules of procedure governing civilian service were also unsatisfactory. For example, once his application had been accepted, a conscientious objector had to wait 12 months to find out whether he was to be allowed to perform civilian service or not. He then had to wait a further 13 to 18 months before being told where he was to be assigned. If his application was rejected, he was then treated as a soldier and, as such, had to perform military service. In general, the conscientious objection procedure did not appear to be based on very humanitarian considerations and did not provide proper guarantees of respect for freedom of conscience. He would like to hear the comments of the Italian delegation on that question.

63. Mr. SADI said that he had listened with interest to the Italian delegation's explanations of why it was not necessary to include torture as an offence in criminal law. However, as torture was a common worldwide practice and no country was immune to it, he sincerely hoped that the Italian authorities would reconsider their position on the question and make torture an offence, as had in fact been proposed in a number of bills submitted to them.

64. Paragraph 42 of the report stated that torture was not practised in Italy. He wondered how that assertion could be reconciled with the fact, which had been acknowledged by the Italian authorities, that members of the security forces were currently being prosecuted for ill-treatment of prisoners.

65. Finally, with regard to the National Bioethics Committee (see para. 32 of the report), extremely clear and detailed guidelines must be drawn up on research into gene therapy, the donation of organs, etc. The utmost caution must be exercised in that regard as genetic engineering and research into altering the human body were highly dangerous from an ethical point of view.

66. Mrs. CHANET said that she, too, was concerned by the question of torture. The Italian authorities had devoted lengthy paragraphs of the report to their reasons for not making torture a specific offence, but only a dozen lines to matters relating to article 10 of the Covenant. The report stated in particular that the Italian legal system was an improvement over the provisions of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment - which had certain drawbacks - and that torture was not practised in Italy. The Committee, however, had a great deal of information from NGOs that ill-treatment was a common practise in Italian prisons, and that situation was of serious concern to the Committee. It might have been more convincing for the Italian authorities to explain exactly how the Italian legal system dealt with such abuses.

67. With regard to detention, what was stated in paragraph 75 of the report was unsatisfactory. However, she had compared that paragraph with what was stated in paragraph 59 and found that article 274 of the Code of Criminal Procedure contained rules applicable to provisional detention which were based on a number of criteria identical to those adopted by the European Court of Justice. She was afraid, however, that, from the point of view of article 9 of the Covenant and article 5 of the Convention against Torture, the provisions described in paragraph 75 of the report might cause major difficulties in that they established a very close link between provisional detention and the penalty. That meant that, in Italy, there was a sort of pre-judgment, which was not compatible with the principle of the presumption of innocence. She would like to know whether the Italian authorities intended to keep the legal time-limit of six years for provisional detention and whether they planned to review the question of the current close link between that type of detention and the penalty for the offence.

68. She associated herself with the concerns expressed by Mr. Ban on the Code of Criminal Procedure and said that the situation did not appear as satisfactory as it might have been some years after the Code's entry into force. She would like, in particular, to hear the Italian delegation's comments on the elimination of the office of examining magistrate. The new system, which was modelled on the anglo-saxon system, admittedly restored the balance between defence and prosecution in a number of respects. However, it would be helpful to have precise information on the means also made available to the defence to restore the balance with the prosecution, which, it should not be forgotten, had the police at its disposal. In addition, had financial resources been allocated to lawyers, whose profession had changed substantially under the new procedure? Had training resources been allocated to members of the bar to enable them to effectively discharge their functions under conditions which, for most of them, were quite new?

69. Mr. EL SHAFEI thanked the Italian delegation for its replies to the additional questions asked by members of the Committee, particularly with regard to the application of articles 7 and 10 of the Covenant, which was a question of increasing concern to the Committee.

70. It was his impression that, with the increase in crime, largely as a result of the drug traffic and illegal immigration, the measures taken by the police were becoming more and more extreme. Regarding the mafia phenomenon, which was widely discussed both in Italy and abroad, he noted that repressive

measures had been taken but wondered, in that connection, about the observance of the provisions of some articles of the Covenant. For example, some non-governmental organizations had repeatedly reported the excessive use of provisional detention measures in the case of individuals suspected of corruption. Perhaps the Italian delegation could explain whether those criticisms were justified and, if so, what measures the authorities intended to take to remedy the situation.

71. With regard to the ill-treatment of detainees, he thanked the Italian delegation for its explanations on a number of cases. He understood that judicial enquiries had been opened and that, as a result, a number of the persons responsible had been charged and suspended from duty, but that they had subsequently been found innocent. Perhaps the Italian delegation could provide some clarification in that connection and, without going into the details of all the cases mentioned by Amnesty International, explain how the police authorities generally dealt with such situations. In addition, on the question of prison overcrowding, perhaps the delegation could inform the Committee whether conditions had improved and whether the justice authorities were making increased use of house arrest measures or substitute penalties. It would also be helpful to know whether there was an independent prison supervision system.

72. He noted that the second periodic report contained little information on the use made of the freedom court or its powers. As no reference was made to that court in the third periodic report, he wondered whether it had ceased operating or had been replaced by another institution. Finally, if, as was stated in the third report, the judiciary was sometimes subjected to pressures from political quarters, it would be useful to know what measures were taken to protect the independence of the judiciary in such cases.

73. Mr. BRUNI CELLI noted that, in paragraph 37 of the report, it was stated that "the practice of torture and other cruel, inhuman or degrading treatment or punishment has always, without any exception, been considered to be contrary to the political approach and the government action that have from the very outset characterized democratic Italy", which might appear obvious, as the use of torture was of course not characteristic of democracies. Clearly, however, cases of violations of human rights and of torture could still occur in democratic countries such as Italy, as shown by the information given in paragraph 41 of the report. It would be helpful to be informed in detail of the reasons why Italy did not consider it necessary to make torture an offence in its domestic legislation. As Italy had ratified the Covenant, article 7 of which prohibited torture, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and since it had included in its Constitution article 27 concerning torture, why had it not introduced into its criminal system the concept of torture as a crime? In its general comment on article 7, the Committee had stated that "complaints about ill-treatment must be investigated effectively by competent authorities". There were therefore grounds for wondering what would be the competent authorities in Italy to deal with cases of ill-treatment and torture, if such practices were not subject to penalties as offences under the criminal system.

74. Mr. AGUILAR URBINA expressed profound concern at the large number of cases of ill-treatment and torture attributed to the police authorities and prison warders in Italy, cases which were practically universal knowledge. It was especially worrying that, according to information provided by Amnesty International, in most cases, even when State officials were thought to be responsible, the investigations, for reasons of varying validity, were practically never taken to a conclusion. He asked whether a defence counsel could be present at interrogations, so as to guarantee that the accused was not subjected to ill-treatment.

75. The Italian delegation had stated that provisional detention was an exceptional measure. In some cases, however, it could apparently last up to six years, which seemed excessive, to say the least. In that connection, the Italian delegation had stated that, in cases connected with organized crime or corruption, there was no possibility of house arrest and provisional detention was applied systematically. In such cases, however, in Italy as in other countries, the media regularly conducted propaganda campaigns designed to build up heavy presumptions of guilt against the accused. In the light of such manipulation, what did the Italian authorities do to ensure observance of the principle of the presumption of innocence? Furthermore, was provisional detention ordered by the public prosecutor or by a judge? Finally, it would be helpful to have some clarification on the concept of the "presumption of non-guiltiness", referred to in paragraph 114 of the report.

76. Mrs. EVATT noted with satisfaction that, in its report, the Italian Government had raised the questions of bioethics and euthanasia, which were currently assuming increasing importance.

77. Non-governmental organizations such as Amnesty International had often criticized the Italian Government for not acting on such allegations of ill-treatment and torture of persons in custody and prisoners, and for not providing sufficient information, as it was absolutely essential in some cases for investigations to be carried out openly and impartially and for their findings to be made public. In that connection, it would be helpful to have information on a case not previously mentioned concerning Leila H., a French citizen of North African origin, who was reported to have been raped by members of the Ventimiglia police force on 15 July 1993.

78. One question not raised in the report and which could give cause for concern was the system applied by law to persons who could be detained on grounds of mental illness. In such cases, who could order the detention and what remedies were available?

79. She understood that persons accused of acts of terrorism or involvement in organized crime were subject to special detention regime and special supervision. She wondered, therefore, whether the imposition of such a special regime was fully consistent with the provisions of articles 9 and 10 of the Covenant. With regard to conditions of detention in general, she wondered whether the standard Minimum Rules for the Treatment of Prisoners were applied, as Amnesty International had drawn attention to reports of ill-treatment of prisoners in the high-security wings of some Italian prisons. She also wondered what was the role of the Parliamentary Committee on Prisons in investigations of special cases or conditions of detention.

80. Mr. CITARELLA (Italy) said that he would reply to the general questions asked by members of the Committee, on the understanding that further, more detailed, information would be provided at the Committee's following meeting.

81. The essential problem with regard to torture and ill-treatment was to know whether they should be classified as offences under the Italian Penal Code. It should be noted that, under the current Penal Code, any person resorting to violence against an accused person or prisoner in their charge was liable to a penalty commensurate with the gravity of his acts. A bill to make torture an offence had nevertheless been submitted to Parliament, but had not been adopted. If torture was made an offence under the Italian legal system, legal evidence would have to be produced to demonstrate that the person responsible had actually used violence against the alleged victim, and the guilty party would then be punished only after a lengthy procedure. Under the current Penal Code, objective proof was enough for proceedings to be instituted against the suspect and to convict him if found guilty. For that reason, the Italian authorities had not deemed it advisable to make torture an offence in domestic law.

82. All members of the police and prison staff received special training in human rights, in particular, with regard to torture and ill-treatment. The main problem was that prisons were overcrowded and conflicts could arise for that reason. In other cases, when prisoners might actually have been subjected to ill-treatment or even torture, the Ministry of the Interior, when informed of the situation, immediately suspended from duty all those thought to be responsible and an inquiry was carried out by the justice authorities which, on the basis of the evidence, decided on the criminal proceedings to be instituted. In that connection, while some non-governmental organizations might have experienced difficulties in obtaining information from the authorities, that was simply because the authorities were obliged to observe the confidentiality of the pre-trial inquiry. Once the inquiry had been completed, the information was made public. In any event, the Parliamentary Committee on Prisons could visit any prison establishment to inspect the conditions of detention. Furthermore, the European Committee for the Prevention of Torture was also authorized to investigate at first hand conditions of detention in any Italian prison establishment. The members of the Committee could form their own opinions on detention conditions in Italy, on the basis of the European Committee's findings.

The meeting rose at 6 p.m.